from date of Judgment (*i.e.* 21-1-86) to date of satisfaction.

5. Quantum for the 2nd Appellant on 100% liability is as follows:

(a) General damages for pain and suffering at Ringgit Forty Thousand ($40,000/=) with interest thereon at 8% per annum from date of service of Writ (*i.e.* 12-10-82) to date of Judgment (*i.e.* 21-1-86);

(b) Special damages at Ringgit Six Hundred ($600/=) with interest thereon at 4% per annum from date of accident (*i.e.* 12-8-81) to date of Judgment (*i.e.* 21-1-86); and

(c) Interest on the aforesaid sum of Ringgit Forty Thousand and Six Hundred ($40,600/=) at 8% per annum from date of Judgment (*i.e.* 21-1-86) to date of satisfaction.

AND IT IS FURTHER ORDERED that the Respondents do pay the 1st and 2nd Appellants the Costs here and below to be taxed *AND IT IS LASTLY ORDERED* that the deposit of $500/= paid into Court by the Appellants as security for costs of this Appeal be refunded to the Appellants.

GIVEN under my hand and the Seal of the Court this January 21, 1986.

Sd. Soo Ai Lin
Senior Assistant Registrar
Supreme Court, Malaysia.

Solicitors: *John Ang & Jega; Varughese & Co.*

MAMAT BIN DAUD & ORS. v. GOVERNMENT OF MALAYSIA

[S.C. (Mohamed Azmi S.C.J.) February 14, 1986]

[Kuala Lumpur – Supreme Court Civil Application No. 26 of 1985]

Constitutional Law – Application for leave to challenge Act of Parliament – Whether penal offences introduced by the Penal Code and the Criminal Procedure Code (Amendment) Act 1983 are ultra vires the Federal Constitution – Federal Constitution, arts. 3, 4 & 74(1).

The applicants in this case applied for leave under Article 4(4) of the Federal Constitution. The issue in the case was whether the penal offences introduced by the new section 298A of the Penal Code by the Penal Code and Criminal Procedure Code (Amendment) Act 1983 are *ultra vires* Article 74(1) of the Federal Constitution as being in excess of the legislative power of Parliament.

Held: (1) in this case the validity of the legislation is to be challenged on the ground that it deals with a matter with respect to which Parliament has no power to make law. As such leave of the Court is required under Article 4(4) of the Federal Constitution;

(2) the application is not frivolous and the applicants should be allowed to canvass their case before the full court on the constitutionality and validity of the new section 298A of the Penal Code.

Cases referred to:

(1) *East Union (Malaya) Sdn. Bhd.* v. *Government of the State of Johore and Government of Malaysia* [1981] 1 M.L.J. 151.

(2) *Ramasamy a/l Shanmugam* v. *State Government of Penang and Government of Malaysia* [1986] 2 M.L.J. 188.

SUPREME COURT.

G. Sri Ram for the applicants.

T. Selventhiranathan, Senior Federal Counsel, for the respondent.

Mohamed Azmi S.C.J.: When I granted the applicants leave under Article 4(4) of the Federal Constitution, I indicated that I would give my reasons for allowing the notice of motion. I now proceed to do so.

The issue in this case is whether the penal offences introduced by the new section 298A of the Penal Code by the Penal Code and Criminal Procedure Code (Amendment) Act 1983 (Act A549) is *ultra vires* Article 74(1) as being in excess of the legislative power of Parliament. *Inter alia,* the new section makes it a penal offence for any person to cause disharmony, disunity or feelings of enmity, hatred or ill-will, on grounds of religion, between persons or groups of persons professing the same or different religions. The offence is punishable with imprisonment for a term which may extend to three years, and if committed in the proximity of any place of worship or in any assembly engaged in the performance of religious worship or religious ceremony the imprisonment term may extend to five years. It is common ground that the word "religion" in the new section is intended by Parliament to cover all religions including Islam. Mr. Sri Ram, counsel for the applicants submits that by virtue of Article 74 and item (1) of the State List in the Ninth Schedule to the Federal Constitution, Parliament has no legislative competence to enact the new section to cover the religion of Islam because it has inter alia no power to legislate either law to cover Islamic law, or law relating to personal and family law of persons professing the religion of Islam; and nor has Parliament any power to enact law with respect to mosques or any public places of worships;

creation and punishment of offences of persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List. It is further submitted that actually Parliament has no power at all to enact law on any religion or to create penal offences on ground of any religion. The power to enact such matters is reserved by Article 77 for the legislature of a State under residual power of legislation except for those aspects of Islam which are already listed in the State List. For the respondent however, Mr. T. Selventhiranathan argues that Act A549 is enacted within the legislative competence of Parliament since it is covered by item 4(h) of the Federal List which confers Parliament with the power to make law pertaining to civil and criminal law and procedure including creation of offences in respect of any of the matters included in the Federal List or dealt with by federal law.

For the applicants to succeed, they must satisfy the court firstly that leave is necessary under Article 4(4) and secondly, that they have an arguable case in that the application is not frivolous. In this particular motion, not only is the impugned law a post-Merdeka legislation but also the intended challenge is on the competency of Parliament to enact the legislation and it is not merely grounded on the impugned law being inconsistent with the Constitution. In other words, the validity of the legislation is to be challenged on the ground that it deals with a matter with respect to which Parliament has no power to make law. As such leave of the court is required under Article 4(4) [See *East Union (Malaya) Sdn. Bhd.* v. *Government of the State of Johore and Government of Malaysia*[1]; and *Ramasamy a/l Shanmugam* v. *State Government of Penang and Government of Malaysia*[2]].

On the second requirement, the first, second and third applicants were charged and found guilty under the new section 298A of the impunged legislation by the Magistrate's court at Hulu Trengganu in connection with their divisive activities amongst Muslims as unauthorised "Bilal", "Khatib" and "Imam" respectively during a Friday prayer held on May 13, 1983 at Kampung Kenanga, Wakaf Tapai, Ajil. Article 3(1) provides that Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation. Mr. Selventhiranathan contends that the constitutional right of citizens to practise their religions in peace and harmony equally applies to persons professing the Islamic religion. The applicants do not seem to disagree with this proposition but they claim that except for legislation enacted under Article 76(1) it is for the legislature of a State and not Parliament to make law in the nature of section 298A for the purpose of peaceful and harmonious practice of the religion of Islam. In the circumstances I am of the view that the present application is not frivolous and the applicants should be allowed to canvass their case before the full court on the constitutionality and validity of the new section introduced by Act A549.

Application granted.

Solicitors: *Sri Ram, Zulkifly & Kumar.*

ARTHUR LEE MENG KWANG v. FABER MERLIN MALAYSIA BHD. & ORS.

[S.C. (Mohamed Azmi, Syed Agil Barakbah & Wan Hamzah S.C.JJ.) March 17, 18 & 20, 1986]

[Kuala Lumpur – Supreme Court Civil Application No. 5 of 1986]

Practice and Procedure – Contempt of court – Safeguards laid down in relevant Rules of Court – Technical irregularities – Locus standi – Particularization of charge – R.H.C. 1980, O.52 – R.S.C. 1980, rr. 4 & 71(3).

Constitutional Law – Supreme Court and High Court – Protection of dignity and integrity of – Federal Constitution, art 126.

This was an application by the applicant for an order to set aside the *ex-parte* order of the Supreme Court granting leave to the respondents to commence committal proceedings for contempt and the Notice of Motion pursuant to the said leave. The objections raised may be classified under two headings *viz.* procedural and substantive. On procedural objections, the following are the summary of the alleged principal defects:

(1) The Motion does not state that it has been issued pursuant to leave granted on July 4, 1985.

(2) No Statement was before the Court on the date when leave was granted.

(3) The original documents in the *ex-parte* application including the affidavit in support were not served on the advocate.

(4) The leave has lapsed under 0.52 r. 3(2), R.H.C.